

STATEMENT OF THE CASE

Janice Moore (“Mother”) appeals the trial court’s order terminating her parental relationship with her son, N. L.

We affirm.

ISSUE

Whether the trial court erred when it terminated Mother's parental relationship with N.L.

FACTS

In July of 2001, the Bartholomew County Department of Child Services (“the BCDCS”) removed Mother’s children, M.M. and K.M. from her care.¹ Subsequently, the BCDCS formulated a case plan to help Mother to become drug-free and to provide a safe environment for her children. Under the case plan, Mother was to maintain appropriate visitation,² demonstrate appropriate parenting skills, maintain adequate housing and employment, complete parenting and anger management classes and undergo a psychological evaluation. The BCDCS also referred Mother to the Homebuilders program in the summer of 2003. Homemaker Becki Williams was to “help [Mother] with setting up her housing, budgeting, visitations, child care, anything she might need to be able to get [M.M. and K.M.] back.” Tr. 36.

¹ K.M. had been hospitalized for a skull fracture and her attending physicians found evidence of multiple previous skull fractures. Mother and her boyfriend denied knowledge of the injuries. Given the undetermined cause of K.M.’s injuries and her tender age, the BCDCS removed both children from Mother’s home in July of 2001 and placed them in foster care.

² Under the case plan, Mother was permitted to visit with the children once a week under supervision. The BCDCS intended to gradually increase the supervised period during which Mother could visit with the children in her home.

In February of 2002, Mother was convicted of driving with a suspended license and was placed on probation. After two additional arrests for the same offense, Mother's probation was extended to end in 2005.

During the BCDCS' continued involvement with Mother, she learned that she was pregnant.³ In September of 2003, while she was visiting Mother's home, homemaker Williams observed a strong odor of marijuana. Williams administered a urine drug screen to Mother, who was still pregnant. Mother tested positive for marijuana. On November 18, 2003, Mother gave birth to N.L. The hospital tested a meconium⁴ sample from N.L. and subsequently notified family case manager, Carol Gwin ("Gwin"), that the test had indicated the presence of marijuana.

On December 18, 2003, when N.L. was one-month-old, the Bartholomew County juvenile court conducted an emergency detention hearing at which Gwin sought and was granted permission to take N.L. into custody. During the hearing, the probation department conducted a sweep of Mother's home and found marijuana and alcohol. The probation officers administered a drug screen to Mother and arrested her when she tested positive for marijuana. Gwin took N.L. into custody and placed him into foster care, where he remained until the termination hearing.

On January 8, 2004, the BCDCS filed a petition alleging that N.L. was a CHINS. The trial court held a fact-finding hearing on May 10, 2004. The State presented

³ N.L.'s putative father, Jelanie Lawson, is not a party to this appeal.

⁴ Meconium is the first stool of an infant, composed of materials ingested while the infant is *in utero*. It is sterile and can be screen tested to check for exposure to various drugs.

evidence of pending drug and probation charges against Mother and also informed the trial court that Mother had lost her state-subsidized housing due to her arrest. The BCDCS introduced a modified⁵ case plan for reunifying Mother with M.M., K.M., and N.L. Thereafter, the trial court adjudicated N.L. as a CHINS, finding that Mother had seriously endangered N.L.'s health.

By May of 2004, K.M. and M.M. had been out of Mother's care for over two and a half years. On May 25, 2004, the trial court terminated Mother's parental relationships with them.⁶ Mother appealed the ruling; however, on July 15, 2005, we affirmed the trial court's judgment. On November 24, 2004, the trial court held a permanency hearing. The BCDCS acknowledged that Mother was making progress but wanted additional assurances that she could "demonstrate lasting stability." (Mother's App. 57).

By the next CHINS review hearing on May 12, 2005, N.L. had been out of Mother's care for approximately seventeen months. Mother advised the court that she was again pregnant; however, the fetus displayed signs of significant developmental problems and was not expected to survive. On May 26, 2005, the BCDCS filed a petition to terminate Mother's parent-child relationship with N.L. "given the length of time [N.L.] had been out of the home and the fact that under the involuntary termination of

⁵ The BCDCS modified its pre-existing case plan to account for N.L.'s needs and further address Mother's drug problems. Under the modified case plan, Mother was to (1) maintain a stable home environment; (2) become drug-free; (3) visit with N.L. twice a week for an hour per visit; (4) follow the rules of her probation; (5) locate and obtain suitable housing; (6) maintain steady employment or a verifiable source of income; and (7) demonstrate that her bills were being paid. Mother was also to continue working with Homebuilders.

⁶ The trial court issued its judgment to that effect on October 20, 2004.

[M]other's two other children, there were unresolved safety issues that caused concern for [N.L]." *Id.* at 58. At the initial hearing on July 14, 2005, the trial court noted that Mother had recently delivered a stillborn baby and would not be in attendance. Mother underwent a long period of physical and emotional recovery thereafter.

The trial court conducted a permanency hearing on November 7, 2005. The BCDCS "moved the court to consider termination of Mother's parental rights as the permanency plan." *Id.* The court-appointed special advocate ("CASA") disagreed with the BCDCS' recommendation, citing Mother's improved maturity, stability and self-sufficiency. Mother insisted that she could parent N.L. properly and requested a continuance of the fact-finding hearing "to provide additional time for reunification services and adequate time to evaluate those services to determine if reunification is a viable alternative to termination." *Id.* at 48-49. On November 17, 2005, the trial court issued its order and stated, in pertinent part,

The [BCDCS] has provided no direct services to [M]other since [N.L.] was removed in December, 2003. The original case plan called for [M]other to complete IOP and aftercare, regularly visit with the child and maintain stable employment and housing. At a Permanency Hearing on November 24, 2004, the [BCDCS] noted that the case plan has been modified to allow increased visitation upon completion of IOP and aftercare.

[Mother] complete[d] IOP and aftercare in August, 2004. All drug screens reported to this court have been negative and [Mother] is in compliance with her probation. Visitation has never increased and remains at twice-weekly for one hour each session.

[Mother] has maintained the same independent housing since May, 2005 and has maintained a source of income, although the places of employment have changed during the course of the case plan.

Given the above, the court cannot conclude that the conditions that resulted in [N.L.]’s removal will not be remedied.

Id. at 44-45.

Consequently, the BCDCS provided Mother with additional services aimed at increasing her bond with N.L. and providing Mother with homebuilding skills. The BCDCS homemaker, Kim LaFolotte, and a therapist who was to “oversee the expansion of visitation” were assigned to work with Mother. *Id.* at 59. At a subsequent status conference on February 8, 2006, Gwin advised the trial court that Mother had recently been arrested for driving with a suspended license. The CASA also reported that she was having difficulty making contact with Mother. The CASA explained that her numerous attempts to contact Mother, “including stopping by her residence, leaving cards at the residence and leaving messages by phone, [were] all to no avail.” *Id.* The trial court advised Mother to maintain contact with the CASA and with the homemaker and reminded Mother that “her failure to openly communicate with service providers was a problem in the prior CHINS and terminations proceedings” involving K.M. and M.M. *Id.*

On April 19, 2006, the trial court conducted a review hearing. At the hearing, Gwin advised the trial court that Mother was again pregnant.⁷ Gwin testified that Mother had attended only ten of nineteen available opportunities for visitation with N.L. Gwin noted that some visits were missed for valid reasons; however, others were missed for unsatisfactory reasons, indicating that Mother was not sufficiently prioritizing her visitation. The CASA reported continued difficulties with contacting Mother.

⁷ Mother was expected to give birth on September 1, 2006.

By the time of the review hearing, N.L. had been out of Mother's care for approximately twenty-eight months. Gwin and the CASA testified that Mother had made no progress under the case plan. Mother, upset upon hearing these accounts, "reported that she was leaving the city of Columbus and was not going to be involved anymore. She left the courtroom before the conclusion of the hearing." *Id.* at 60. The trial court noted that if Mother failed to attend the next two scheduled visits, the BCDCS would be relieved of its obligation to provide further visitation until Mother reappeared in court. On May 4, 2006, Mother moved to Cincinnati, Ohio. Before she left, she asked the BCDCS to reduce her scheduled visitation with N.L. from two visits per week to one a week. Visitation was modified accordingly. Thereafter, Mother missed her first scheduled visit.

On May 16, 2006, the trial court conducted the termination trial. Homemaker LaFolotte testified that in January of 2006, she was assigned to help Mother with "remaining drug-free and [providing] a stable home and employment, budgeting, increasing visits with [N.L.] and getting prepared for placement with [N.L.] in [Mother's] home." Tr. 7. LaFolotte testified that on January 12, 2006, Gwin accompanied her on her first visit to Mother's home and they discussed their objectives with Mother. LaFolotte testified that thereafter she was unable to reach Mother.

LaFolotte further testified that on four subsequent occasions, she visited Mother's home, found no one at the residence, and left her business card. LaFolotte only received one telephone call in response. LaFolotte made an unannounced visit on March 27, 2006 and spoke briefly with Mother; they scheduled their next meeting. However, on that

date, Mother was again not at home, but had left a note that she was at the doctor's office. LaFolotte later learned that Mother had contracted ringworm.⁸ LaFolotte testified that "some of her work [could have] been accomplished by way of telephone" communication, and that had Mother contacted her, LaFolotte could have instructed and advised Mother over the phone. *Id.* at 12.

LaFolotte also testified that Mother rejected her offers of transportation either to visit or to go to the Bureau of Motor Vehicles to remedy Mother's driver's license problems. By April 13, 2007, LaFolotte testified that she had still not heard from Mother. LaFolotte made a final unannounced visit; again, Mother was not at home. LaFolotte testified that she was never able to "provide the services that [she] had been referred to provide" and characterized her work with Mother as "unsuccessful" given their inability to meet regularly or to address Mother's issues. *Id.* at 8, 9.

Linda Lloyd, N.L.'s foster parent, testified that N.L. had been in her care since he was removed from Mother's home. N.L. was approximately one-month-old when he was removed, and by the time of the termination hearing, he was two and a half years-old. Lloyd testified that N.L. was more strongly bonded to her than to Mother, as evidenced by N.L.'s reluctance to interact with Mother. Lloyd testified that during scheduled visits, N.L. had often cried for Lloyd, and would "calm down and play with [Mother]" only when Lloyd stayed in the visitation room "as a security blanket." *Id.* at 17. Lloyd

⁸ Due to her highly contagious condition, Mother missed two and a half weeks of visits with N.L.

acknowledged Mother's love for N.L., but doubted that increased visitations would have any effect⁹ on their tenuous bond.

Family case manager, Gwin, testified that her work with Mother began when the BCDCS took custody of K.M. and M.M. in 2001. She testified that Mother's referral to Homebuilders and homemaker Williams ended unsuccessfully because

[Mother] was not really stable. She didn't have a job. I think there were concerns with her . . . relationship. [Williams] was having difficulty getting [Mother] to . . . being able to see her all the time. I think there were times when [Williams] would go over there and [Mother] wasn't home. And then [Williams'] services ended that summer [of 2004].

Tr. 37. In her testimony, Gwin acknowledged Mother's efforts to become drug-free and to maintain her drug-free status.¹⁰ Gwin also testified extensively about Mother's performance of the case plan objectives, namely securing stable housing and employment, and visiting N.L. regularly.

With regard to Mother's housing, Gwin testified that during the course of N.L.'s wardship, Mother resided in four different homes, with her most recent move occurring approximately two weeks before the termination hearing, when Mother moved to Ohio.

⁹ Lloyd testified that "to this point, [N.L.] still does not want to be with . . . he doesn't want to be with [Mother]. I mean, he . . . like tolerates her. He knows he has to visit her. He likes to play with her. She'll play with him. But I think that's as far as it goes." Tr. 21-22.

¹⁰ Gwin testified that in February of 2004, Mother was referred to Quinco Recovery Associates and enrolled in the basic program. Due to her poor attendance, Mother was subsequently enrolled in an outpatient intensive program in March of 2004. Her first three drug screens indicated the presence of marijuana in her system; however, each successive drug screen indicated a reduced level of marijuana, demonstrating that Mother had stopped using marijuana. By April of 2004, the BCDCS was satisfied that Mother was drug-free.

As to Mother's employment record, Gwin testified that Mother "ha[d] maintained some employment," but noted that there had been "breaks" in her employment.¹¹ *Id.* at 45.

As regards Mother's visitation, Gwin testified that the BCDCS initially scheduled two visits a week for Mother and N.L., with the intention of gradually increasing the frequency of the visits. Gwin admitted that said increase never occurred, in large part due to the following factors which arose during N.L.'s wardship: (1) instability in Mother's employment and housing; (2) Mother's arrests and probation; (3) Mother's unwillingness to cooperate with homemaker and counseling services; (4) Mother's transportation problems; (5) issues with Mother's untruthfulness¹²; Mother's stillbirth pregnancy; (6) staffing issues at Family Services¹³; and (7) Mother's relocation to Ohio.

¹¹ Mother worked for six different employers over the course of N.L.'s wardship, and also, collected unemployment benefits during the summer of 2005.

¹² Gwin testified that Mother had been untruthful about the status of her driving privileges, N.L.'s putative father, Jelanie Lawson's whereabouts, and the fact that she was pregnant with N.L.

¹³ Gwin explained that "[b]ecause of [N.L.]'s not being really bonded with [Mother], it was going to require that someone work with her and [N.L.] and work with [N.L.] to move [the visits] to another place and even to [Mother's] home." *Id.* at 47. Gwin testified that because of Mother's work schedule, she could only visit in the evenings or late afternoons, and Family Services did not have available staff for those visits. Gwin testified,

In order to increase the [visitation] time and [to provide] somebody to be able to work with her and help [N.L.] and be able to transport him and transport her to move from our office to some place else, we needed an agency to be able to do that and we didn't have anybody that could do that until Family Services had some more openings.

Id. at 64-65. In December of 2005, Family Services was able to provide an individual, Sally Roll, who could accommodate Mother's schedule. The BCDCS hoped that Roll and a newly-referred homemaker, Kim LaFolotte, could assist with Mother's visitation.

However, Gwin testified that Mother missed "a lot of visits." *Id.* at 48. Gwin acknowledged that Mother missed some meetings for legitimate reasons, namely when either she or N.L. was ill. However, Gwin questioned Mother's reasons for missing or shortening other visits, because "she was getting furniture" or going to the BMV to see about her driver's license. Gwin testified that Mother had refused offers of help to assist her in getting her license reinstated and Mother missed visits due to lack of transportation.

Gwin testified further that the period from December of 2005 to the termination date was a critical time in terms of increasing N.L.'s visitation with Mother. During this period, "visitation was not kept regularly. [Mother] did not maintain her appointments with [Homemaker LaFolotte]. . . . [Mother] didn't have a lot of contact with the CASA worker as well." *Id.* at 49. Gwin also testified that she was concerned about the strength of the bond between Mother and N.L. Gwin explained that this tenuous bond would be impaired by Mother's relocation to Ohio and the reduction in scheduled visits.

Gwin testified that Mother's parental relationship with N.L. should be terminated because "[Mother] is not able to provide a home for [N.L.] and . . . I don't know that she will be able to do that after working with her for this extended period of time." *Id.* at 61. When asked whether the continuation of the parent-child relationship posed a threat to N.L., Gwin responded that the BCDCS' permanency plan for N.L. was to place him for adoption. She added, "I think it will be hard for him to move from the foster home to another possible adoption placement but I think he can do that." *Id.* at 62. Gwin also testified that "the longer . . . we try to work with [Mother] to get [N.L.] placed with her and [the longer] he stays in this foster home, the more bonded he's going to be in his foster home and I think that's not good for him." *Id.* at 61.

Mother took the stand at the termination hearing and testified that she had been "clean and free of drugs" for approximately two years. *Id.* at 77. Thus, she testified, the conditions that warranted N.L.'s removal had been remedied. Mother acknowledged her prior "bad judgment" and her difficulties with maintaining stable employment. *Id.* at 83. Mother also expressed frustration with the BCDCS' failure to increase her visitation

during periods when she demonstrated stability. *Id.* at 80. She testified that she had changed, but did not “know what else to do to show that [she had] progressed.” *Id.* at 84. Mother also explained that she had moved to Ohio for better employment prospects and family support, believing that in so doing she was improving her chances of becoming reunited with N.L. Mother admitted that she was again pregnant,¹⁴ but that her pregnancy would not interfere with her ability to parent N.L.

After hearing the evidence, the trial court expressed its view that Mother’s prior drug use was not the only reason for N.L.’s removal. The trial court stated,

I would concur with you, agree with you that some of the original concerns for [N.L.], I won’t go so far as to say the only issue for [N.L.] was the drug issue. Although that was in large part, [what] led to his removal. But there certainly were some other issues going on at this time, because of the involvement of the Court, but I don’t think I can completely ignore, but I will agree with you that from all indications you have addressed a drug issue.

Id. at 95. The trial court also expressed its reservations about placing N.L. back with Mother, given the length of time that N.L. had been out of Mother’s care, the lack of any significant bond between them, and Mother’s “reluctance to be very open to agencies’ involvement.” *Id.* at 97. The trial court opined,

[W]hat I am left with is [that] you were unwilling to meet and make yourself available and that became a real gauge for me because that allows someone to have that bird’s eye view in your home.

* * *

¹⁴ Mother testified that this was her seventh or eighth pregnancy. Before the BCDCS became involved in June of 2001, Mother had three children, one of whom died of Sudden Infant Death Syndrome before the BCDCS’ investigation. Mother’s rights to the other two children, K.M. and M.M., were subsequently terminated. N.L. is the child involved in the instant case. Mother’s subsequent pregnancy ended in a stillbirth, and she was again pregnant at the time of the termination hearing. At the time of the termination hearing, Mother did not have physical custody of any of her surviving children.

How do we go from a child with little bond, some bond, two hours a week to say, okay, now we're going to have unsupervised [visitation] in your home. Someone is going to have to be able to work with you. There was nothing else under the case plan for me to gauge it by. The [BCDCS] was not ordering you into individual counseling or . . . parenting. I didn't have any other information and what I'm left with for three months is a CASA that's saying, you were virtually unavailable to her and a homemaker that has to conclude the same thing. . . . Now, do I continue [N.L.'s wardship]? I don't know what I'm gaining for this young man. This young boy. Because it's more time away from . . . from trying to progress with this bond. At what point do I say this child deserve[s] permanency[?]

Id. 97-98. The trial court then took the matter under advisement.

On October 5, 2006, the trial court issued its judgment of involuntary termination of the parent-child relationship between Mother and N.L. The trial court found that termination was in N.L.'s best interest because of the length of time that N.L. was in wardship and out of Mother's home. The trial court also found that Mother failed to demonstrate "sustained progress under the case plan," exhibited an unwillingness to participate in the services that had been provided for her, and "was never able to progress to visitations beyond two hours per week supervised." (Mother's App. 60). Accordingly, the trial court ordered that Mother's parent-child relationship with N.L. was terminated. Mother now appeals from the trial court's order.

DECISION

Mother argues that the trial court erred when it terminated her parent-child relationship with N.L. When reviewing termination of parental rights proceedings on appeal, we neither reweigh the evidence nor judge the credibility of witnesses. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001). We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn from that

evidence. *Id.* In deference to the trial court's unique position to assess the evidence, we set aside the judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* If the evidence and inferences support the trial court's decision, we must affirm. *Id.*

"Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities." *In re E.E.*, 736 N.E.2d 791, 7938 (Ind. Ct. App. 2000). The purpose of terminating parental rights is not to punish the parents, but to protect their children. *Id.* To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements of Indiana Code section 31-35-2-4(b)(2). *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004). Thus, the State must prove that:

- (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
 - (ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
 - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (B) there is a reasonable probability that:
 - (i) conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) continuation of the parent-child relationship poses a threat to the well-being of the child; and
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2).

We begin by noting that because subsection (b)(2)(B) is written in the disjunctive, the trial court need only find one of the two elements by clear and convincing evidence. *Castro v. State Office of Family and Children*, 842 N.E.2d 367, 373 (Ind. Ct. App. 2006). Thus, termination was proper if the BCDCS established that the conditions leading to removal would probably not be remedied or that the continuation of the parent-child relationship posed a threat to N.L. Here, the trial court concluded that the BCDCS proved both of these requirements. However, for our review, we only need to find that the evidence supports one of the requirements. Thus, we turn to review whether the evidence supports the finding that the continuation of the parent-child relationship posed a threat to N.L.'s well-being.

N.L. was removed from Mother's care when he was one-month-old. He remained in foster care until the termination hearing, by which time, he was approximately two and a half years-old. Understandably, N.L. was closely bonded to foster mother, Lloyd; however, his bond with Mother was tenuous at best. N.L. exhibited signs of separation anxiety when separated from Lloyd and occasionally expressed reluctance to interact with Mother. Gwin testified that a protracted relationship with Mother would result in N.L.'s becoming "more bonded" with Lloyd to N.L.'s detriment.

The period between February of 2006 and the date of the termination hearing "was critical for substantial progress under the case plan." (Mother's App. 60). During this period, Mother was to work towards a stronger bond with N.L. Unfortunately, Mother did not capitalize on her opportunities to bond with N.L. Mother missed opportunities to

visit with N.L., attending only ten of nineteen visits. Some absences were justified due to illness; however, others indicated that Mother was not sufficiently prioritizing her visits. In addition, Mother was not receptive to the BCDCS' offer of homebuilding services, aimed at effecting her reunification with N.L.

The BCDCS presented evidence that Mother missed half of her available opportunities to visit with N.L. Yet, in her brief, Mother argues that her "lack of bonding was unfortunately the foreseeable result of a schedule that allowed visits for a maximum of two hours per week." Mother's Br. 16. We reject Mother's attempt to somehow mitigate her shoddy visitation record, and to instead assign blame to the BCDCS. Mother did not sufficiently prioritize her visitation time with N.L., as evidenced by her decision to move to Ohio in the months preceding the termination trial, and her request to the BCDCS to decrease her opportunities for visitation.

As Gwin noted, prolonging N.L.'s stay in his foster home is not good for N.L., because his placement there will not be a permanent one. In the interest of establishing permanency and easing N.L.'s transition into his adoptive placement, the trial court terminated the parent-child relationship between Mother and N.L. Given these facts, the trial court's finding that that a reasonable probability existed that the continuation of the parent-child relationship threatened N.L.'s well-being was not clearly erroneous.

Mother also argues that the trial court erred when it found that termination of the parent-child relationship between Mother and N.L. was in N.L.'s best interests, "given the length [of] time that [N.L.] ha[d] been in wardship and out of Mother's home." (Mother's App. 60). In determining what is in the best interests of a child, we must look

beyond the factors identified by the BCDCS and look to the totality of the evidence. *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005). In so doing, we must subordinate the interests of the parents to those of the children. *Id.* For the reasons that we have discussed above, we conclude that the trial court's finding that termination of the parent-child was in N.L.'s best interests was not clearly erroneous.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.